

ESTATE OF JACOB A. HENRY.

JUNE 8, 1910.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PRINCE, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 19379.]

The Committee on Claims, to whom was referred the bill (H. R. 19379) for the relief of the estate of Jacob A. Henry, having considered the same, report thereon with a recommendation that it do pass with the following amendment:

Page 2, line 6, after the word "cents" insert the following words: "and said sum of \$690.56 are hereby appropriated out of any money in the Treasury not otherwise appropriated."

Appended hereto are letters from the War Department which are made a part of this report.

MAY 7, 1886.

SIR: I have the honor to return herewith the letter of 3d instant from the Hon. William M. Springer, chairman of the Committee on Claims, House of Representatives, with House bill 5936, to pay Jacob A. Henry for work done on Muscle Shoals Canal, and in reply to Mr. Springer's request for information thereon to state as follows:

The claim of Mr. Henry is based upon a contract dated September 25, 1877, and modification thereof dated May 12, 1879, between Maj. W. R. King, Corps of Engineers, acting in behalf of the United States, and Seth N. Kimball for building locks on the Muscle Shoals Canal.

This contract, in which Mr. Henry's name nowhere appears, after having been at the request of Seth N. Kimball three times extended, expired by limitation January 1, 1880.

The Committee on Claims, first session Forty-seventh Congress, May 24, 1882, in a communication to the Secretary of War inclosed bill H. R. 5592, for the relief of Jacob A. Henry for losses incurred by forfeiture of above contract of Seth N. Kimball, with request for the facts as they appeared on the War Department records.

Major King, to whom the matter was referred, reported June 3, 1882 (copy herewith), a full statement of all the facts in the case.

The Chief of Engineers returned the letter of Hon. D. C. Smith to the Secretary of War June 7, 1882, stating: "Major King is perfectly conversant with all the facts pertaining to the claim of Mr. Henry, and his statements are entitled to consideration."

Very respectfully, your obedient servant,

JOHN NEWTON,

Chief of Engineers, Brigadier and Brevet Major-General.

HON. WILLIAM C. ENDICOTT,
Secretary of War.

WAR DEPARTMENT,
Washington City, May 12, 1886.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant inclosing for information House bill 5936, Forty-ninth Congress, first session, which authorizes the payment to Jacob A. Henry of amounts aggregating \$36,665.24 for work done and damages incurred in the construction of locks on the Muscle Shoals Canal, Alabama.

In reply I beg to transmit herewith a communication of the 7th instant from the Chief of Engineers, with a copy of a report in this case submitted June 3, 1882, by Maj. W. R. King, Corps of Engineers, in charge of the improvements on the Muscle Shoals Canal, in connection with House bill 5592, Forty-seventh Congress, first session, which had in view the same object as the present bill, and also a copy of the letter from the Chief of Engineers of June 7, 1882, forwarding Major King's report, which latter covers the information possessed by this department in regard to the case.

From the letter of the Chief of Engineers it will be seen that Major King is perfectly conversant with all the facts pertaining to the claim of Mr. Henry, and that his statements are entitled to consideration.

Very respectfully, your obedient servant,

WM. C. ENDICOTT,
Secretary of War.

HON. WM. M. SPRINGER,
Chairman Committee on Claims, House of Representatives.

UNITED STATES ENGINEER OFFICE,
Chattanooga, Tenn., June 3, 1882.

GENERAL: In compliance with indorsement of Chief of Engineers, on communication of Hon. D. C. Smith, Committee on Claims, House of Representatives, to the honorable the Secretary of War, dated May 24, 1882, I have the honor to report:

First. As stated in Mr. Henry's petition, a contract for building Locks 8, 9, and 10, Muscle Shoals Canal, was awarded to S. N. Kimball in 1877 (September 25), and I have no reason to doubt that Kimball undertook to transfer his interest in the contract to the Joliet Stone Company, and they in turn to J. L. Overton & Co., including J. A. Henry, but it is not true that Mr. Henry was given to understand either directly or indirectly that any such transfer had been or would be recognized.

Second. On the other hand, the contract itself specifies that, "And it is further agreed by the parties of the second part, as required by the fourteenth section of the act of Congress approved July 17, 1862, that neither this contract nor any interest therein shall be transferred to any other party or parties, and that any such transfer shall cause the annulment of the contract as far as the United States is concerned."

Mr. Henry must therefore have bought a contract without reading it, or he could not have been ignorant of the law.

Third. No one but S. N. Kimball was ever recognized as having any interest in this contract. All vouchers were signed by him in person and all payments were made to him even up to the time the contract was annulled. Mr. Henry and all other persons on the work (except inspectors, etc., employed by the Government) were treated as employees of Mr. Kimball, and as soon as I had positive information that such was not the case I recommended that the contract be annulled.

Fourth. Captain McFarland, who acted as counsel for both Kimball and Henry, was verbally notified by me that transfers of contracts were forbidden by law, and in July, 1879, I formally notified J. L. Overton & Co. (which Mr. Henry states included himself) that Kimball was the only person recognized as having any contract or pecuniary interest in the work. (See appended copy marked A.)

Fifth. So far as relates to the obstructions of the boating channel by cofferdams, there is not the slightest cause of complaint.

When the contract was awarded to Kimball, both channels below the mouth of the canal were about equally obstructed by rock reefs and were neither of them navigable for a skiff at low water. There was no understanding at that time nor subsequently that the Government would improve either of these channels before the Kimball contract was completed; but it was found practicable to commence work on one of these channels early in 1878, and it was almost finished at the time the contract terminated. The improved channel, although not completed, was available for the contractor during the winter and spring of 1878 and 1879, and had he fully utilized it then there would have been no trouble in boating up all the stone he used during the existence of the contract. Having received this gratuitous help from the Government Mr. Henry complains because the work was not entirely completed and the cofferdam removed earlier in the season.

Sixth. The entire quantity of stone ready for boating from the quarry at the time the contract was terminated was only 469 cubic yards, less than one-eighth enough to build one of the locks. The delay caused by the noncompletion of the channel was not, therefore, longer than it would have taken to boat that quantity of stone to the work, or, say, twelve days.

Seventh. The delay of the steamer *Hobson*, referred to in the affidavit of William Davidson, and the consequent loss, was due entirely to mismanagement or carelessness on the part of those having her in charge. She was employed when she could not work to advantage, and was run on a rock early in the season (before the cofferdams in question were built), and instead of taking advantage of proffered assistance of the Government working force to get her off, she was allowed in the most imbecile manner to remain aground all summer, while her charter was running on, though I don't believe it was at the rate of \$40 a day.

Eighth. There never has been a time from the beginning of work under Kimball's contract until the present that there was even a fair prospect that he would ever complete the work, and from what appeared to me to be good and sufficient reasons and in the interest of the work, I earnestly recommended that his bid be rejected. The recommendation, however, was not approved, and Kimball evidently entered into the contract with the deliberate intention of getting rid of it in some such way as he finally adopted.

Ninth. Although Mr. Henry may have been led into this trouble by unscrupulous men, and may have thought that he could complete the contract without losing money by it, there is not a shadow of doubt but that the termination of the contract by the Government was the means of saving him thousands of dollars, as he could not have done the work for anything like the prices named in the contract, and all work done would have been at a loss.

Tenth. Mr. Henry has no cause to complain of the treatment he has received of the Government in this matter. Believing that he had been duped by sharpers, I have gone to the very extent of my ability in dealing liberally with him. His tools, railroad, unused stone, and other materials were appraised by three competent and disinterested engineers at their "value to the Government in their present condition and location," and Mr. Henry was paid in full for all that could be conscientiously bought for the work. Stone to the value of \$8,982 was bought, and the quarry he refers to has been rented since March 12, 1881, at \$500 per annum, and will be a valuable quarry for other work when the Government is done with it.

And finally I recommended, and still recommend, that if it can properly be done the retained percentage (\$3,974.74) and balance forfeited by Kimball (\$690.56) for work done after the last payment be paid to Mr. Henry on power of attorney from Seth N. Kimball, dated January 31, 1880.

It should be noted that Mr. Henry had no power of attorney from Kimball until a month after the contract was terminated. This would certainly be a liberal settlement and should bring from Mr. Henry a receipt in full of all demands upon the Government arising out of work done under Kimball's contract.

Of course the plea in such cases is that the Government gets the benefit of the contractor's loss, but had Kimball cheated a poor laborer out of his wages, as laborers have often been cheated by contractors, the Government would have been neither morally nor legally holden for the amount, and still less should it be holden for the funds advanced by a capitalist who violates both the law and the contract.

However unfortunate Mr. Henry may have been in his business associations in connection with this work, it is fair to assume that all the parties in interest in this contract understand each other and are united on one point, viz, that all the money they can get out of the Government is clear gain to them.

All the facts stated in the foregoing report will be fully covered by affidavits of men of unquestioned integrity and intelligence and will be forwarded on application if desired.

As the entire appropriation under which Kimball's contract was made has been expended, I would respectfully recommend that the Treasury Department be authorized to pay any allowance Congress may decide to make "from funds in the Treasury not otherwise appropriated."

Respectfully submitted.

W. R. KING, *Major of Engineers.*

CHIEF OF ENGINEERS, U. S. ARMY,
Washington, D. C.

ESTATE OF JACOB A. HENRY.

OFFICE OF THE CHIEF OF ENGINEERS, UNITED STATES ARMY,
Washington, May 9, 1900.

DEAR SIR: Replying to your letter of the 30th ultimo concerning H. R. 6865, Fifty-sixth Congress, first session, I have the honor to state that Maj. W. R. King, who made the recommendation in favor of the proposed payment, is dead.

He was an officer of the highest character and integrity, and it is believed that he was fully acquainted with all the circumstances of the case.

His opinion and recommendations are, in my judgment, entitled to careful consideration.

Very respectfully, your obedient servant,

JOHN M. WILSON,
Brig. Gen., Chief of Engineers, U. S. A.

Hon. H. S. BOUTELL,
House of Representatives.

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